Mark Cochran 5-2-24

State Representative

RE: Tellico Plains Director's Order DWS23-0190

Representative Cochran:

TDEC has issued a Director's Order against Tellico Plains which has numerous material factual errors and does not comport to the authority granted to TDEC in TCA 68-221-718. Numbering in this correspondence matches the numbering system of the Order for Clarity.

VI.

It is true that Tellico collected 6 of 7 distribution bacteria samples in July of 2023, however direction provided to Mayor Parker in the absence of a certified operator directed the Mayor to collect 6 samples in July 2023. Tellico's previous certified operator, Robert Patty, turned in his notice to resign on July 14th, 2023 and on July 19th Mayor Parker determined the City's best interests were served by severing its relationship with Mr. Patty. Mayor Parker along with staff member, Greg Newman, contacted TDEC in July to determine how many samples needed to be collected. **They spoke with Robert Ramsey in the Knoxville TDEC field office who instructed the Mayor that Tellico needed to collect 6 samples per month.** Acting on this specific direction from TDEC, Tellico collected 6 samples in the month of July. Without a certified operator on staff, Mayor Parker acted in exactly the way one would expect an official to act by contacting TDEC and seeking guidance to the duties necessary to maintain regulatory compliance. Her actions show all the due diligence anyone would expect given the circumstances of the situation. Had TDEC provided accurate information to the mayor, the system would have obviously collected 7 samples in July instead of 6. When TDEC itself provides inaccurate information to an elected official which results in a violation, this mitigating fact should be taken into consideration. Mayor Parker has detailed notes documenting her conversations with TDEC during this timeframe to support the aforementioned facts.

The second issue in this section involves the failure to report disinfectant residual leaving the water treatment plant in July 2023. Troy Taubert the current water treatment plant operator assumed duties on September 1, 2023. Mr. Taubert contacted TDEC staff members Erich Webber on September 5th, 2023 and Brad Antone on September 7th, 2024. Mr. Taubert was not working with Tellico in July and told TDEC staff he did not believe it

was his responsibility to investigate chlorine data generated at Tellico prior to his employment. He requested that TDEC come and perform a sanitary survey at Tellico to investigate previous managements operation of the water system. Mr. Webber instructed Mr. Taubert to submit incomplete forms to TDEC for July and Aug so TDEC would know they were not just missed. **Mr. Taubert followed the instructions and submitted the monthly report forms to TDEC via email on September 8th, 2023.** Mr. Taubert further supplied a letter to TDEC on September 8th explaining his understanding of the data reviewed and forms submitted to TDEC. Mr. Taubert believed TDEC would be performing a Sanitary Survey and the data collected under previous management would actually be reviewed by TDEC staff to determine regulatory compliance.

VII

**It is a false statement that Tellico collected 6 of 7 bacteriological samples in August 2023 and that they failed to monitor free chlorine residual as a result.** Tellico collected 7 bacteriological samples in the month of August 2023. Mr. Taubert contacted the State lab who analyzed Tellico's samples and provided results to TDEC in a Sept 11th, 2023 email to Brad Antone which shows Tellico collected 7 samples in Aug 2023. On October 23rd, 2023 Jeff Bagwell with TDEC was forwarded this September 11th correspondence as he had sent an NOV to Tellico for failure to collect any bacteriological samples in the month of August 2023. After twice notifying and providing proof to TDEC that Tellico had collected 7 samples in August 2023, Mr. Taubert thought this issue had been resolved.

The August and July paperwork was submitted by Mr. Taubert for work outside of his authority on September 8th, 2023, as requested by TDEC staff and with the understanding TDEC would be coming to perform a sanitary survey and reviewing the data themselves.

VIII

Division staff did perform a sanitary survey on September 28th and 29th, 2023. The Order states "…the System's continuous chlorine analyzer had not been working properly during the months of July and August 2023". This statement is not true as the chlorine analyzer was functioning properly, but data was not being transmitted at the rural vale plant to the data collection software. The sanitary survey letter correctly states this fact as does Mr. Taubert's September 8th letter to TDEC. This is important because both plants operated by Tellico are unmanned facilities with automatic shutdown capabilities for low chlorine. Rural Vale's low chlorine shutoff was set to 0.35mg/L and this shutoff kept any water less than 0.35 mg/L from entering the distribution system. Mr. Taubert has not identified any instances at Rural

Vale where water of less than 0.35 mg/L could have entered the distribution system and neither has any TDEC staff member. The Town Plant is also an unmanned facility with automatic shutoff set at 0.3mg/L. Data for this facility was recorded in the SCADA system. Upon learning of the Rural Vale data collection problem, Mr. Taubert took corrective action and had Labtronix repair the data transmission into SCADA for chlorine readings in early September. It was in fact repaired prior to TDEC ever coming to perform a sanitary survey.

At the Town Water plant on September 15th, 2023, the chlorine feed lines were blocked resulting in chlorine readings dropping and shutting down the plant. System personnel, Greg Newman, was notified by SCADA of low chlorine and the plant being shut down. He went to the plant and fixed the chlorine feed system and then placed the high service pumps in hand because the automatic system will not function if chlorine is low. The procedure he utilized to place the pumps in hand was his instruction from previous management. All staff are aware after this instance was identified that they are not allowed to place pumps in hand to bypass automatic shutdowns. If this occurs now staff must drain the contact tanks and refill them with chlorinated water before water is allowed to flow into the distribution system.

The data for Town Plant shows the event on September 15th allowed water with a low chlorine residual to enter the distribution system for a total of about **one hour**. The Rule quoted in the Order Section XII, 0400-45-01-.40(4)(c)1.(i) states "…The groundwater system must maintain the Department-determined residual disinfectant concentration every day…" What is the groundwater system Department-determined residual disinfectant concentration? And are any timeframes required for systems to meet this requirement? For surface water systems see Rule 0400-45-01-.17(30) which states "…The free residual disinfectant concentration in the water entering the distribution system cannot be less than 0.2 mg/l for more than four hours…." Surely if a surface water system has to comply with entry point disinfection requirements of not less than 0.2 mg/L for more than four hours than the same requirement would be applicable for groundwater systems which are expected to have very little microbial contamination potential as compared to surface water. TDEC staff were notified the September 15 discrepancy only lasted for approximately 1 hour via email on Dec 6th in the public notice sent for their review which stated the low chlorine was for approximately one hour.

The Order says Tellico is in violation for not having a certified plant and distribution operator for an extended period. What Rule determines the timeframe a system has to find a new operator when the previous operator

resigns and is subsequently terminated? The Order in Section XV cites Rules which require a system to have an operator that is properly qualified, but these Rules establish no timeframe for a system to acquire a new operator when circumstances such as those at Tellico arise. The Mayor was working to hire a new operator as TDEC is well aware. Mayor Parker contacted the Commissioner's office seeking guidance prior to relieving the previous operator was terminated on July 19th. Knoxville field office staff were also contacted by the Mayor prior to termination of the previous operator as Brad Antone supplied the Mayor with a list of certified operators on July 17th. The contract with Roaring River Consulting was dated August 15th, 2023 and was signed by the Mayor on 8-25-2023 after approval of the City Council.

TDEC cites 0400-45-09-.04(2) and (3) which should in fact be Rule 0400-49-01-.04 which governs operator certification. Interestingly the Order quotes subparagraphs (2) and (3) but not the actual germane subparagraph (4) which states "…A system shall notify the Division of Water Resources in writing within thirty (30) days of its loss of the services of a certified operator in direct charge." The Rule does not go on to say how long a system can be without a certified operator but clearly a system has 30 days to even notify TDEC they have lost their certified operator in direct charge. Without a Rule specifying a timeframe to have a certified operator, TDEC cannot penalize Tellico plains for taking more than 30 days to have a new operator. TDEC states in the Order "…the Respondent was in violation for not having a certified water treatment plant operator and a certified distribution system operator for an extended period." TDEC then relies on letters written to the Mayor regarding the lack of certified operator. By taking an enforcement action against Tellico for lack of a certified operator without a Rule which states how long a system is allowed to operate without an operator, TDEC is acting as the legislative and executive branch of government which directly abuses the principle of separation of powers. TDEC cannot write a letter detailing a requirement which must be achieved by a regulated entity, i.e. a system has 30, 60, or any number of days to have a certified operator, and then enter an enforcement action for failing to achieve a deadline established in a letter. Enforcement Actions by TDEC are only lawful when they cite an actual Rule or Statute not an arbitrary requirement such as "an extended period".

Further, Tellico is directed in this Order they have to appeal to an administrative judge who is a TDEC employee. TDEC is acting as the legislative, executive, and Judicial branches all in one in this action against Tellico. They wrote a letter detailing a requirement to have a certified operator in so many days which is not supported by a Rule, then issued an Order fining the City for not complying with the letter, then require Tellico to

appeal to a TDEC administrative Judge. The Founders established our Constitutional Republic with three branches and separation of powers to keep government from becoming tyrannical. TDEC's actions have clearly abused the rights of the City of Tellico Plains and the rate payers of Tellico Plains. TDEC has also abused the powers vested in the legislative branch and Judiciary branch with this enforcement action. See Federalist No. 51 February 8, 1788 by James Madison for additional context.

X

Tellico does not dispute the table showing the number of bacteriological samples required to be taken. However, as previously stated Tellico was directed by TDEC staff to collect 6 instead of 7 samples in July 2023.

XI

The Rule cited in this section requires chlorine residuals to be collected when bacteria samples are collected and specifically states "…water systems that use chlorine or chloramines must measure the residual disinfectant level in the distribution system at the same point in the distribution system and at the same time as total coliforms are sampled,…" The intent of this Rule is that systems collect a chlorine residual when they collect a bacteria sample. For example, if a system collects a bacteria sample and fails to record the chlorine residual at the same time and location of the bacteria sample then they are in violation of this Rule. This Rule does not mean if you failed to collect a bacteria sample then you also failed to collect a chlorine residual and a system receives two violations as TDEC has done to Tellico Plains. If TDEC's interpretation of the Rule is correct, then the rule would state chlorine residuals must be measured at the same frequency as bacteriological samples. The Rule actually says chlorine residuals must be measured at the same point and time **not frequency** of samples.

XII

In July and August as previously stated the chlorine residual monitors were functioning and plant automatic shutdowns were functioning which kept water below 0.35mg/L at Rural Vale and 0.30 mg/L from entering the distribution system. Data for Rural Vale was not stored in the SCADA software. TDEC has supplied no evidence the plants produced water which violated any chlorine residual standards. The question is if a chlorine monitoring system loses data did the system fail to monitor? Tellico staff at the time did not know the data wasn't being stored. How could they conduct grab sampling and repair the instrument when they didn't know it wasn't recording the data? If a system is hacked in the future or simply lost electronic data due to file corruption would TDEC's position be the system

failed to monitor and failed to repair an instrument? Since Tellico has automatic shutoff capability for both water plants, they could report chlorine residuals for July and August were greater than the low chlorine shutoffs for each plant for each day in July and August.

The September event wasn't an equipment failure and didn't even last four hours. See Section VIII above.

XIII

Again citing the same issues with multiple rule violations over and over. The continuous monitoring equipment was not the issue but rather the recording of chlorine residuals at Rural Vale in July and August. The September event lasted one hour and the monitoring equipment functioned properly. See above sections for further information.

XIV

See XIII. Additionally, TDEC was notified by Mr. Taubert via telephone and written correspondence of the chlorine data collection problems at Tellico once he discovered them. It is stretch throughout this Order to indicate TDEC staff performed a file review or conducted a sanitary survey and determined the chlorine issues at Tellico. These issues were not uncovered by TDEC but were in fact self-reported by Tellico's current certified operator Mr. Taubert.

XV

See Section VIII

Summary and Conclusion

Summary of issues cited in this Order:

1. Not collecting all required bacteriological samples in July
2. Failure to report chlorine levels leaving the plants in July
3. Not collecting all required bacteriological samples in August
4. Failure to report chlorine levels leaving the plants in August
5. Chlorine analyzer not functioning in July and August
6. Failure to monitor chlorine leaving the town plant in September.
7. Not having a certified operator for an extended timeframe

Items 1,2, and 4 occurred due to specific direction from TDEC to Tellico Plains Mayor and current certified operator, Troy Taubert as detailed above. Item 3 is false and TDEC had been supplied proof item 3 was false via written correspondence to multiple TDEC staff members. Item 5 is misleading at best as the chlorine analyzer was functioning but data records were incomplete due to communication errors between the rural vale SCADA system and its storage system on the internet. TDEC

provides no proof or evidence of any equipment malfunction. Item 6 is not a violation as it only lasted for one hour. Item 7 cannot be part of an enforcement action as TDEC has no Rule specifying the timeframe required to obtain a new certified operator.

As is detailed above the violations issued to Tellico Plains by TDEC in this Order are in part false on their face and while other record keeping discrepancies exist they do not rise to the level of an enforcement action requiring the City to pay civil penalties. TDEC's authority to issue Administrative Orders has been abused in this filing against Tellico Plains. TCA 68-221-718 Construction of Part States:

(a)(1) The penalties, damages and injunctions provided for in this part are intended to provide additional and cumulative remedies to prevent, abate and control violations of this part.

TDEC didn't resolve any of the so-called violations it states in this Order. It was Tellico's staff who resolved the discrepancies identified. Mr. Taubert reviewed Tellico's sampling requirements before assuming duties and instructed Tellico they needed to collect 7 bacteriological samples in August as staff were still following TDEC's direction to collect 6 samples per month. Both Plants have chlorine levels recorded in the SCADA data system and are recorded on circular paper charts. The system has redundant chlorine data collection systems in place. TDEC's Order requiring an SOP is entirely unnecessary as the issues have all been resolved. Further the SOP requirements listed by TDEC are just regurgitations of Rule requirements. TDEC is in essence Ordering Tellico to write an SOP that says follow the Rules. What good is an SOP which states the same requirements as the Rules already require? Does an SOP have more authority than the drinking water regulations?

TDEC has a policy for when Director's Orders are issued against systems. That policy requires systems to have and ETT score of 11 or more before an Order is issued. Even with all of the bogus violations stated in this Order, Tellico does not have an ETT score of 11 or more. Knoxville field office staff and Troy Taubert have had numerous conversations regarding Tellico's ETT score and it has never been greater than 11 during the timeframe Mr. Taubert has been involved with Tellico Plains. In addition to the false violations cited in this Order, TDEC also tried to issue a monitoring violation to Tellico for failure to monitor for lead and copper because they did not report to tdec they notified their individual customers of their specific lead and copper results. They tried to force Tellico to issue a public notice to all customers saying they didn't know the quality of water with regard to lead and copper. After more than a month TDEC finally agreed Tellico didn't have to do this public notice but wouldn't even write a letter back explaining the

situation of how it was possible TDEC didn't know how to interpret their own Rules.

TDEC has undermined its authority by issuing this unnecessary, arbitrary, and capricious Order. So many errors exist which are all to the detriment of Tellico Plains an honest observer has to ask why is TDEC targeting Tellico Plains water system?

TDEC must reevaluate this Order, its Staff who made the decision to lodge this Order, and its procedures for what necessitates an Order to a public water system. Further TDEC must correct the public record to the Citizens of Tellico Plains as the former operator has published this felonious Order on social media to the detriment of the City's management which has mislead Citizens regarding the operation of the town's water system.

I urge the legislature to address the tyrannical actions of TDEC in this matter against Tellico Plains. TDEC has usurped the legislature's authority by assuming authority to write statues and usurped the Judiciary's authority by requiring Tellico to be judged by an administrative judge employed by TDEC. The current supreme court docket case Securities and Exchange Commission v. Jarkesy addresses the constitutionality of administrative enforcement proceedings. I urge you to modify TDEC's administrative Order process by requiring hearings in local Chancery courts for enforcement of any Order. The checks and balances on executive authority must be restored to protect citizens from tyranny as clearly displayed in the actions of TDEC against Tellico Plains.

Sincerely,

Troy D. Taubert

Roaring River Consulting

Tellico Plains Certified Drinking Water Plant Operator

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